

II. **Remarks**

**A. Status of the claims**

Claims 1-2 and 5-20 are currently pending. No amendments to the claims have been made herein.

**B. Rejection under 35 U.S.C. § 102(b)**

In the Office Action, the Examiner maintained the rejection of claims 1, 2 and 5-17 under 35 U.S.C. §102 (b) as being anticipated by Granger et al. (U.S. 5,149,538, hereinafter "the '538 patent"). In making the rejection, the Examiner stated that Granger et al. teaches an opioid antagonist such as naloxone, and that "based on the applicant's own specification, opioid antagonists appear to fall under what the applicant has himself defined under the broad term of ergoloids (See top of Page 3 of the instant specification)".

This rejection is traversed. Applicants respectfully submit that the present claims exclude opioid antagonists by virtue of the recited Markush listing that the distressing substance is "selected from the group consisting of emetics, nauseants, flavouring substances, ergolides, bitter quaternary ammonium compounds, atropine or salts thereof, and mixtures thereof."

The Examiner has rejected the claims on the position that in view of the specification, opioid antagonists are encompassed by "ergolides". The portion of the specification to which the Examiner refers in making this rejection recites:

Among the substances which may be used are for example[**]ergolides such as bromocriptin, lisoline, pergolide, lysuride and their salts such as the maleates, non-permeant opioid antagonists such as derivatives of naloxone e.g. N-methyl-N-allyl naloxone or salts thereof, other opioid antagonists such as apomorphine or salts thereof, quaternary compounds such as bitter agents e.g. denatonium benzoate, and emetics such as Ipecacuanha**

and derivatives thereof. Other suitable substances include atropine or salts thereof.

Specification at page 3 (emphasis added).

It appears that the Examiner is misconstruing this passage of the specification. This passage recites 6 different substances which may be used as distressing substances, i.e., (1) ergolides; (2) non-permeant opioid antagonists; (3) other opioid antagonists; (4) quaternary compounds; (5) emetics; and (6) atropine. Applicants submit that the exemplified ergolides in this passage are limited to bromocriptin, lisoline, pergolide, lysuride and their salts such as the maleates and does not include opioid antagonists, as alleged by the Examiner.

This position is supported by the use of the term "and" in the context of "and their salts such as the maleates" which is an indication to the reader that the salts are intended to be the last exemplification of the listed ergolides.

This position is further supported in that one skilled in the art would not recognize ergolide compounds as including an opioid antagonist. "In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art." *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003). Accordingly, as Applicants have not made any attempt to give the term "ergolides" a meaning other than the ordinary and customary meaning, one of ordinary skill in the art would recognize that ergolides do not include opioid antagonists.

Therefore, as the present claims exclude opioid antagonists by virtue of the recited Markush group, Applicants submit that Granger et al. fails to teach each and every limitation of the present claims.

Appl. Serial No. 10/037,299  
Response dated May 2, 2007  
Response to Office Action dated February 8, 2007

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §102(b) over Granger et al. be removed.

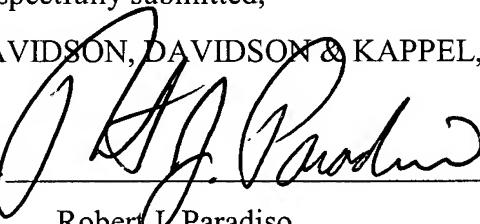
### **III. CONCLUSION**

In view of the foregoing, Applicants believe that the above-referenced rejections have been obviated and respectfully request that the rejection be withdrawn. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance prosecution of the present application. An early and favorable action is earnestly solicited.

Respectfully submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

By



Robert J. Paradiso  
Reg. No. 41,240

DAVIDSON, DAVIDSON & KAPPEL, LLC  
485 Seventh Avenue, 14<sup>th</sup> Floor  
New York, New York 10018  
(212) 736-1940